

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 22 February 2022

Public Authority: Health and Safety Executive
Address: Redgrave Court
Merton Road
Bootle
Merseyside
L20 7HS

Section 51

Under section 51 of the Freedom of Information Act 2000 (FOIA), which is set out below, the Information Commissioner (the Commissioner) has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of FOIA.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

he may serve the authority with a notice (in FOIA referred to as “an information notice”) requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

1. The Commissioner has received an application under section 50, reference IC-115823-N7K7, for a decision as to whether a request for information made by the complainant to Health and Safety Executive (HSE) on 7 April 2021, has been dealt with in accordance with the requirements of Part I of FOIA.

Nature of complaint

2. On 7 April 2021 the complainant requested information of the following description:

"Recently I reported my employer for H&S violations... The HSE case worker has informed me that the investigation has concluded and closed. I am now requesting that report under FOI Act, so that I can view the findings and ensure that the employer is complying the laws (sic) and implementing safety procedures, devices, proper training, equipment and making our workplace safe for Lone Night Worker."

3. On 12 April 2021 the HSE responded and confirmed that it held 'email correspondence with the dutyholder.' The HSE confirmed that this information was exempt from disclosure under section 41 (information provided in confidence) of FOIA.
4. The complainant requested an internal review on 17 April 2021. HSE sent the outcome of its internal review on 6 July 2021, revising its original position. The HSE confirmed that it was incorrect to apply section 41 in relation to the request.
5. The HSE confirmed that it held correspondence exchanged with the complainant, and evidence provided by the complainant, during the course of the HSE's investigation of the concern. The HSE explained that it was withholding this information in accordance with section 21 (information accessible to applicant by other means) of FOIA. The complainant is not disputing the HSE's position regarding this matter.
6. The HSE also confirmed that it was withholding all correspondence with the dutyholder under section 30(1)(b) (power to investigate offences and conduct proceedings).
7. The Commissioner wrote to the HSE on 6 December 2021 and asked several questions about its application of section 30(1)(b) and for a copy of the withheld information. The Commissioner asked that this information be provided by 6 January 2022.
8. On 6 January 2022 the HSE wrote to the Commissioner and requested that the deadline be revised to 19 January 2022. The Commissioner granted this extension.
9. On 20 January 2022 the HSE wrote to the Commissioner and advised that it needed a further week to provide the requested information. The Commissioner confirmed to the HSE that the deadline had therefore been revised to 27 January 2022. The Commissioner advised that, should he not receive the submission by this date, he would consider issuing an information notice.

10. On 28 January 2022 the Commissioner wrote to the HSE and confirmed that its submission was still outstanding. The Commissioner advised the HSE that if he did not receive the information requested by 11 February 2022, he would issue an information notice compelling the HSE to provide it.
11. At the date of this notice, the Commissioner is still yet to receive either the answers to his questions about the HSE's application of section 30(1)(b) or a copy of the withheld information.

Information required

12. In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of FOIA he requires that the HSE shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information:
 - a) An answer to all of the Commissioner's questions in her original scoping letter of 6 December 2021.
 - b) Full unredacted copies of the withheld information.

Failure to comply

13. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of FOIA, and may be dealt with as a contempt of court.

Right of appeal

14. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@Justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

15. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF